LAKE COUNTY PLANNING BOARD
June 12, 2019
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, Sigurd Jensen, Rick Cothern, Frank Mutch, Lee Perrin, Janet Camel (to 7:27 pm), David Passieri

STAFF PRESENT: Jacob Feistner, Lita Fonda; Wally Congdon

Steve Rosso called the meeting to order at 6:31 pm.

LAKE MARY RONAN ZONING MAP & REGULATIONS AMENDMENTS (6:30 pm)
Steve Rosso noted that this item was postponed. He invited anyone who was here to comment on this item to share comments. No comments were offered.

SWAN SITES ZONING MAP & REGULATIONS AMENDMENTS (6:32 pm)
Jacob Feistner presented the staff report. (See attachments to minutes in the June 2019 meeting file for staff report.) On pg. 3, he corrected a typo in heading II for attachment 3 rather than attachment 5.

Jacob pointed out changes since last month's draft by going through attachment 3 and also corrected a few typos and errors in attachment 3.

Pg. 1, first sentence: remove 'and for temporary Recreational Vehicles as permitted in Section 3(A)(6)'.
Pg. 12, XI.B.3, last line: Add 'the' prior to 'Board'.
Pg. 12, XI.C, 3rd line: Add 'a' between 'which' and 'variance'.
Pg. 13, 2.Variance.a: Include that they are required to provide comment from the local fire department.
Pg. 14, item E, second line: Change 'of land' to 'and/or land'.
Pg. 16, item F: He asked for clarification later on how this would be applied.

Jacob returned to the staff report and talked about pg. 4, #4 and pg. 5, #5.

Regarding the rental of ADUs (accessory dwelling units), Jacob clarified for Frank that this draft removed all mention of rentals. His understanding was the HOA (homeowners association) was okay with long term rentals but [the HOA] would have to speak to that. Steve checked that currently for someone to utilize density, they would have to subdivide before building a 2nd house. If this proposed regulation went into effect, they could build the house with a permit but without going through the subdivision process. Jacob confirmed. It would be less arduous to build a second residence on a single property. He didn't have a number of the number of [qualified] lots that hadn't been subdivided as yet.

Frank asked about senate bill 300 (SB 300) and if zoning would override covenants. Wally mentioned he called but didn't get an answer. Denny Kellogg said it became law. The covenants didn't have a clause about short term rentals (STRs) since that industry didn't exist

when they were written. The clause was put in the zoning for that in 1994. He thought the HOA couldn't override that with the SB 300 law. Their only protection was in the zoning.

Janet asked about the ADU definition. Jacob confirmed that an approved ADU could be rented.

David thought SB 300 dealt with covenants that were changed that affected someone's ability to rent a property. If an association were to adopt the new rule, someone could choose to opt out of that new covenant. They would file either through the HOA or directly with the County to show on the record that they were not part of the new covenant. His understanding was that if the owner were to sell, the grandfathered aspect could not be passed on. He didn't think it applied a lot here. It may solidify someone who had been grandfathered.

[Regarding the definition for 'destroyed' on pg. 17 of attachment 3], David asked where the 60% came from. Jacob responded that it was more than half. That was the number used in other zoning districts because it was over half of the structure. This definition was different compared to the others. Those said 'of the original floor area' which became hard to determine. A person could leave the floor and take away the rest of the house. It was changed to 'the structure' so they could look at it differently. Steve asked about the calculation for the percentage. Jacob said with the new definition they could look at it in different ways, such as by volume. They could take decks and extensions into consideration. Steve hoped for a more definitive definition. You could [use] volume, but what was the volume of a deck without walls? Jacob said that was why they left it at structure, which was defined. ['Destroyed'] was much more thoroughly defined here and clearer than it was currently defined in other zoning.

Frank: Pg. 17of attachment 3, item J. Add 'beyond use' after 'is deteriorated' and eliminate the part after that.

Rick moved to pg. 16 of attachment 3, item F. What was the percent value? Jacob thought the language still needed clarification. This talked about lot coverage rather than buildable area and really changed the game. This brought in lakeshore improvements, anything in the buffer area and anything in the setbacks, which were 3 areas that would not have been counted before. Steve responded that it did recognize the fact that by leaving those areas open without impervious surface, there was pervious surface to absorb stormwater. Jacob noted his main concern was understanding how it was intended. If that was how you intended it, then they would essentially do lot coverage. The whole lot would be buildable. Steve checked that it would not include 25% slopes. Jacob agreed that would be the one exception. He wanted to be clear so he knew how to apply it if it got approved. Steve wanted to include all impervious surfaces when people were developing.

Public comment opened:

Denny Kellogg shared a copy of SB 300 and the Montana Association of Realtors information on this bill. It became law on May 8, 2019. (See attachments to minutes in the June 2019 meeting file for handouts.) Steve gave this to staff and suggested staff could get it to the Planning Board members later.

Robert Korechoff, president of the Swan Sites HOA Board, read a written statement. (See attachments to minutes in the June 2019 meeting file for statement.) He accepted the proposed changes except the removal of the prohibition on STRs, expressed concerns about the effects of SB 300, questioned the motivation regarding STRs and expressed concerns about detrimental community impact. He requested that regulations prohibiting STRs and ADUs be maintained.

Denise Lang spoke as a resident and realtor. She lived in Swan Sites and sold there for people looking for a slower pace in a rural setting, with neighbors as extended family. Her decision to live there was based in part on the zoning and limits on commercial activity. Previously they'd had a bad experience with a wedding business as a neighbor, which had similar impacts with transient population that wasn't vested in the community. Realtors were obligated to disclose neighborhood noise and other nuisances. Transient neighbors were less than neighborly and abused the property, home and neighborhood. They were rural and had no noise ordinances or law enforcement to police the abuse. She implored the Board to consider continuing the prohibition of STRs in the zoning for their unique rural setting. She was concerned neighbor would be turned against neighbor in policing abuse.

Steve expressed interest in knowing if the regulations proposed at the May meeting to regulate STRs were acceptable. A chorus of 'no' came from the gathered public.

Janet Camel needed to leave for a funeral service. She concurred with the Swan Valley residents. This was their community.

Chris Moore purchased in Swan Sites 8 years ago for many reasons, first and foremost that they read in the covenants that STRs were prohibited. They'd lived outside of West Yellowstone in a small, quiet subdivision for many years. Wildlife visited and residents participated in the community. In 1989 only 22 of 79 lots had houses. Around 2007 this began to change as sites were promoted for vacation rentals by owner (VRBO). His family decided to sell due to the loss of sense of community. Now about 75% of the lots were developed, with 13 occupied by residents. Wildlife was only seen in winter, the renters had no vested interest in maintenance of house or yard, multiple families often shared a rental, and late partying was a problem. Most renters had little concern for the neighbors and didn't understand or observe the hazards of interacting with resident wildlife, even leaving out food to attract bears. Lack of regard for speed limits endangers pets and children. Rental house owners did not participate in area cleanups. He talked about Swan Sites and the covenants that protected them, their neighborhood and the rural character from the West Yellowstone experience. The influx of STRs would put this at great risk. He urged the Board to consider the concerns of the residents and not change the established covenants.

Jeff Kemp, Swan Lakers Board President, described its mission to preserve water quality in Swan Lake and the Swan River watershed. The majority of the 215 members were owners in Swan Sites. He spoke to the potential for STRs to have an adverse impact on water quality. One concern was overuse of septic systems and the contamination of the water with septic leaching. Those could be taken care of. The other problem was that STRS added a layer of risk for the introduction of aquatic invasive species (AIS) that they didn't need to incur. Out of state people were not aware of the problem and brought boats that might miss inspections. They simply

shouldn't do [STRs] and he respectfully but urgently requested to keep the prohibition for STRs in the zoning regulations for Swan Sites.

Bob Sleight lived in Swan Sites with his family. He disagreed that STRs would not change the character of the neighborhood. Perhaps the consequences of STRs were not understood. He was from Woodstock, NY, which was similar to Bigfork in many respects. Changes occurred in that town after it became famous. The summer population surged and was accommodated by STRs. The police dept. was overwhelmed and the fire dept. dealt with drug overdoses, drownings, lost hikers and so forth. More services were needed and implemented so taxes went up. Those renters weren't inspecting boats, cleaning up roads or helping neighbors with needs. The character of the neighborhood changed so they left and resolved never to be exposed to that problem again. They bought [in Swan Sites] after studying to find out that what happened in Woodstock couldn't happen here. They didn't want STRs.

Lynn Duerr testified at the last meeting about living next door to a STR. The previous speakers also spoke for her. She gave anecdotes from the last two weeks. People in the area were unable to sleep due to a group of actually good guests who were on their last night and laughed and talked until 1am. Windows were open on the hot night. Sound traveled even though they weren't obnoxious. At another time, a tank alarm on the outside of the building ran for hours at the unoccupied STR. The owner sent someone out, who eventually arrived. Nobody was home but the house was in use. Did they want this kind of thing going on? They didn't need or want STRs. They added nothing and took away much that was valued. She thought SB 300 would block them from doing anything about it unless they had the zoning in their favor prohibiting it.

Joan Wilfong lived [in Swan Sites] for 32 years. Summers had become unenjoyable with the so-called grandfathered cabin. It underwent a tremendous renovation 2 years ago and now had, per Lynn Duerr, 4 bedrooms in the main house and 3 in the added bunkroom, and 2 kitchens. The group size was large. It was horrible in the summer. 30 people would come to party, with loud music and loud talk. Windows were open in the summer, and it was when the residents wanted to enjoy the lake with their families and visitors. They wanted to sleep with their windows open and could not because of the noise from the STR. It was an uncontrolled situation. She was against more STRs being allowed. It was a privilege to live where they lived. Most skimped and scraped in order to live there. They didn't want to see it go downhill.

Peter Leander understood the basis for the amendment was it was difficult for the Planning Dept. Given what had been said, the gravity of the change of the community's character and the other factors mentioned, he didn't believe it was a legitimate governmental basis to effectuate such a change. It was totally out of balance.

Denny Kellogg read comments. (See attachments to minutes in the June 2019 meeting file for statement.) He thought the government was disregarding citizen input, referred to real world examples, objected to the phrase 'appears to be' as being supposition or illusion, and concluded that they had no voice at government at a neighborhood level. He hoped [the Board] would support their neighborhood.

Margaret Kuska lived next to the STR. She thanked and agreed with the previous speakers.

Chuck Shadle agreed with previous speakers. They didn't want STRs.

Sharon Valentine noted a lot of people from Swan Sites were here tonight. It was a long way. She agreed with the previous speakers.

Lynn Duerr shared notes from people who couldn't be here today. One was from someone in Missouri who didn't want STRs. The others were Rochelle & Bert Risley, who had sent a letter. She hadn't heard anyone say they wanted to do this. No one wanted this change.

Public comment closed.

Steve thought they'd missed an opportunity to justify some of the growth policy conclusions in the findings of fact. He described how items in the finding of facts were discussed in italics. He thought the growth policy section on pg. 9 would be helped by some of those. For objective 2.1.6 on pg. 9, #4 from pg. 4 could be put in italics for background. He agreed with some public comment in the respect that they hadn't justified their conclusion that they'd met these goals and objectives.

Steve thought the public was right to some extent that the rewrite of the zoning regulations to include and regulate STRs was to partly control the future demand on the Planning Dept. to enforce the prohibition of STRs. The second part of this was actually the cause of the Planning Dept.'s situation. This was that the demand for STRs had gone up hugely in the last few years given the Internet sites. A lot of citizens complained about taxes and wanted more services, one of which was enforcement of planning and zoning. Those who wanted the County to have better ability to enforce regulations should be talking to their commissioners and letting them know they were willing to help the County financially to pay for some of that enforcement. He was interested in the Board's comments on how the Board should go about this [item]. Personally, he didn't want STRs. He thought the Commissioners needed to come up with some ways to deal with this. The fight would be difficult as he recognized pressure from outside interests to have STRs. They were easy to market and the demand was huge. A lot of people were absent land owners who didn't have to deal with the traffic, noise and problems.

A public attendee contributed that STRs in Kalispell decreased the business at the hotel about 17%. The hotel then pulled funding from events such as dragonboat races.

Frank saw pros and cons. It helped the economy (especially the owner), and might help realtors. It increased housing availability but not in terms of affordable housing. It changed the character of the neighborhood. Permanent residents liked to have family gatherings, BBQs, parties, friends, weddings and late nights. Those weren't all sins of STRs. He agreed that permanent residents were more concerned about lasting friendships. Noise and water quality were certainly problems. He'd say 'not in my back yard' (NIMBY) in terms of STRs. Long term rentals had a different character—most became neighbors and vested in the neighborhood more so that STRs. Banning STRs probably wasn't enforceable and depended on neighbors spying on neighbors, which he didn't like. He would say no to STRs and yes to ADUs. ADUs were different in character. They gave the property owner a chance to retain a property and to have a caretaker or

family member in one of those buildings. A lot that was big enough for an ADU could be subdivided anyway so it wouldn't increase the density.

Steve thought a problem with STRs was they created less housing, not more. People converted homes that were long-term rentals into STR's and took them off of the long term market. People could make more money renting a week at a time.

Lee agreed with a lot of Frank's comments. Certainly the public attendees stated what they felt. If he had a STR in his neighborhood causing problems he wouldn't want that. He agreed that STRs wouldn't really provide housing for [local] people. It was people who were coming for just a few weeks. There were plenty of places like hotels that were in a controllable environment. The police, fire dept. and so forth could easily respond to emergencies. He saw neighbors, local people and himself out cleaning up litter because they wanted the place to look nice. You wouldn't see people from STRs doing that. Those made money for a few people and caused problems for a lot of people. He would object to STRs along with these [attending] folk.

Rick described that he was a retired police administrator from out of state. He assured that Lake County didn't have the resources at graveyard to go to Swan Lake for less than emergency circumstances. He believed in equitable laws through a region. Zoning was a little different. He lived at Lake Mary Ronan next to a STR. The owner was aggressive with his tenants, managed well and had his finger on trying not to harm the neighborhood. It wasn't a lot of events every year. He was in favor of no STRs for this [Swan Sites] group. He thought the attendees reflected their community and the Board should support their beliefs. He also thought people had the right to do with their property at some level so he was a little conflicted. The STR next to him was managed pretty well but he didn't want to see his whole neighborhood that way. He didn't want to put a burden on the County that they couldn't address. Laws that had no teeth were meaningless. If [the Board] could assist [the attendees], he would like to reflect their feelings to the Commissioners so he supported their position.

Sigurd agreed with what had been said.

Rick supported Jacob, who did a great job. Having been in the public service arena, you couldn't make everybody happy and that wasn't your job. Your job was to make laws applicable, fair and just.

David said when a subdivision was created, the owner would try to [make] rules to enhance future value. People bought into covenants. If one renegade decided those were meaningless and unenforceable, the enforcement came from the community. In a way he was looking at this as being a quality of life issue but how it got put back on the burden of the County, because of SB 300, wasn't the solution. They didn't have the enforceability. The growth policy wasn't focused on creating more potential ADU's or STRs. It was a big picture, looking at a diminishing tax base and growing services, requirements and needs, and enhancing future value for the County. If people didn't like SB 300, then there needed to be a push in 2 years to change that so the County wasn't hamstrung. He hadn't read the Swan Sites covenants. Having a set of covenants that would restrict ADUs or STRs was where it needed to start.

Denny K commented to that CC&R's were created in 1969 and included no commercial use. A definition of commercial use was lacking. Were STRs commercial or residential? This was the quandary. If the Montana Supreme Court decided it was a commercial use, it would be banned from Swan Sites under the CC&R's. If these were determined to be residential, then hotels and motels would be residential too.

David wasn't a lawyer but it seemed like if the covenants gave a definition within the spirit of what was trying to be created, it would be clearer in that circumstance. At what point when someone chose to rent a room, did the County have the right to say that wasn't allowed? He gave other covenant examples where he didn't see the County as a police force for the enhancement values that had been enacted within a subdivision, which could be amended. There was a balance. He would rather see boats be restricted in their community to do away with the potential for AIS or people showing up with their boats and so on but that was pretty extreme. He didn't disagree with what they were after.

Denny K said in 1994, they were encouraged by the County to codify the CC&R's into zoning as the best way to enforce it. Now he was being told 25 years later that it wasn't. Robert K noted the staff report said the HOA had been able to monitor and control STRs without County assistance. They weren't asking the County to do this. They were doing this internally. Lynn Duerr thought that if the language wasn't put back in, it would open them up to STRs because of SB 300. They would have to call for a lot more policing, which would be a cost. She detailed other costs and problems. Fred Duerr was past chair of the Hawaii State Hotel Association and served on the business bureau board, with 40 years in the hotel business there. Bringing in outsiders drove up prices so the local people couldn't afford to live there anymore. He referred to the slow response for services and how the community helped out. Outside people didn't help and brought problems. The outside people should be in hotels not in neighborhoods. Sharon Valentine commented regarding the two grandfathered STRs. One was very small. The other was refurbished and now had 7 bedrooms. You would get big groups of people there, to party. [The neighbors] knew the owners and rental agency and could call someone to take care of the issue, although it might be slow. With only one unit they could police it themselves and didn't need the outside help. Joan Wilfong commented that taxes were high. She said they all knew [in Swan Sites] that there were no STRs. People who wanted STRs shouldn't have purchased there. Robert K reiterated that they had one unresolved STR situation. People knew that it wasn't legal and respected it when the HOA sent a letter because the regulation was there.

Steve thought the Board would like to include STRs in prohibited uses. Several other issues had been discussed in the public hearing regarding temporary dwellings, long term rentals being removed from permitted uses so they wouldn't have to get permits, and changes in impervious surface definition. Jacob said that ideally he'd like to get a recommendation to take to the Commissioners in July. It seemed like most people were in agreement except for ADUs and STRs. Steve noted there wasn't much specific response on ADUs. Frank only heard one mention, which lumped them with STRs. They weren't the same. Steve thought ADUs had a much smaller potential impact if they met the regulations. In the definition of an ADU, the owner was required to be on-site. An ADU could not be used for a STR. Rick summarized that ADUs were generally acceptable. The attendees murmured yes.

David and Steve had questions about temporary dwellings and allowing 14 days within a 30-day period. Jacob said [owners] would have the [permit] approval to have a temporary dwelling on their property, with expiration upon change of ownership. Currently, you'd need a conditional use permit from the Board of Adjustment (BOA) to use [an RV] for one weekend. This would allow a person to get a zoning conformance permit to use it for up to 2 weeks. It seemed unreasonable to have to go to the BOA if you had family coming [so with this change] you could just get a permit (or the Board could make it that they could stay without a permit for 14 day) but beyond 14 days, it was a conditional use. Steve thought requiring the [zoning conformance] permit was the way to go. Jacob said this gave it some review but it didn't have to go to the BOA. This would lighten the current regulation. Sigurd thought it made more sense to require a permit for more than 14 days. Jacob said whether that required a permit or not was up to the Board. He talked about the mechanics of doing this. Currently you had to go to the BOA and get approval for either a seasonal use or a construction period. You could have a temporary dwelling and a permanent dwelling. A temporary dwelling wasn't considered as a dwelling unit the same as a house. They were generally short term, not a permanent use.

Steve: Attachment 3, pg. 3, IV.A.7: Strike #7 and change the definition that would allow someone to have a visitor come for 2 weeks without a permit. Jacob said they could leave the definition as it was. Under conditional uses (attachment 3, pg. 3, IV.B.2) he pointed to the bolded wording.

Jacob: Attachment 3, pg. 20, top paragraph: Add something like 'without a permit' maybe in parenthesis after #1 to make it clear. Items 2 and 3 would both be subject to a conditional use approval.

Jacob clarified for David that this was for not more than 6 months. As far as starting the clock, a caller might be asked what evidence the person had on when the occupancy started. If [Jacob] was challenged, he might say that he had no proof, just like with STRs. Enforcement of STRs and temporary dwellings was nearly impossible. Steve thought that was a challenge for the County Commissioners. What if it was an ordinance instead of a zoning regulations? Jacob said it was the same effect. Steve asked why people didn't call the Sheriff's office instead of the Planning Dept. Wally said zoning wasn't treated as a crime. It wasn't set up as an ordinance with a criminal penalty. It could be a misdemeanor for zoning (civil) or a misdemeanor for the crime. Steve thought the Commissioners needed to have that discussion. They'd have people with the same issue in every zoning district. They'd had one letter from someone who leaned towards STRs.

Jacob's question was if [tonight's audience] had the support that they thought they had, then why didn't they amend the covenants? Their covenants restricted to exclusive residential use. They'd presented this as being that the covenants didn't allow it until tonight, when it was proposed to be removed from the zoning. Now they were saying their covenants didn't prevent it. How had they been [enforcing no STRs] if their covenants didn't prohibit it? There were many questions. Steve felt confident that the majority of people in Swan Sites (and probably the majority of people in every zoning district) didn't want STRs. Frank agreed. Steve thought that was where the county should attack this problem rather than seeing it as some kind of pressure to create a way for people to make money or dealing with the fact that people wanted to do it so

making it regulated but allowing it. Jacob assured that the Planning Dept. had no interest in promoting STRs. The goal was to find a way to deal with them. Rick thought it was ripe for a constitutional challenge at some juncture. Frank thought the default position as they went through each zoning district should be that STRs weren't allowed. Then they would find out if anyone wanted them. Jacob said if they did that, they'd be prohibiting a lot of uses that already existed and would have to deal with that. Jacob said the true Part I zoning districts like Melita Island, Kings Point and South of Ronan didn't discuss it. They talked about single-family residential use and went no further. Lake Mary Ronan didn't directly address it. Upper West Shore, East Shore, Finley Point and Swan Sites specifically mentioned rentals. Rick said there wasn't the fervor for STRs at Lake Mary Ronan as they had other fish to fry.

Steve summarized the changes regarding temporary dwellings.

Attachment 3, pg. 3, IV.A: Cross out #7 under permitted uses.

Attachment 3, pg. 20, temporary dwelling definition (top paragraph): one change [add something like 'without a permit' at the end of #1].

Sigurd: Attachment 3, pg. 4: Reinstate #11. Frank asked about ADU's.
Jacob: Attachment 3, pg. 4: Cross out 'primary residence' to address Frank's comment.

Jacob asked about satellite dishes.
Steve: Pg. 6, VI.C: remove as suggested. He asked if there were restrictions in the lakeshore buffer or the vegetative buffer. Jacob couldn't recall dealing with a satellite dish in his tenure. They could be added to the structure definition if there were concerns. He didn't think they were an issue.

Frank added as an aside that someday they should discuss yard lights. Jacob reported that Mission Valley Power (MVP) still put up flood lamps that were side shielded with glass so the light was sent out instead of down, which was what MVP stocked and put up. They seemed disinclined to change. Frank thought they violated this clause. Jacob gave more information gathered when problems with these came up. When you put up a flood lamp, you bought a contract for that. They would only remove it if the County bought out the contract. It was another difficult enforcement issue.

Steve returned to the buildable area definition (attachment 3, item F, pg. 16). At the BOA, he'd seen situations where people pushed against the impervious surface limits. The problem it caused was getting rid of stormwater. In some situations, applicants would be up against the limits of impervious surface but would have open ground around the property to absorb stormwater. The impacts in those cases weren't as severe. Other cases had people with too much impervious surface where, because it was in the setback, it wasn't used in the calculation. Because it was next to the property line, it was very possible the stormwater ran off the paved driveway into the neighbor's property but it wasn't calculated as impervious surface since it wasn't in the buildable area. Someone could pave the entire setback area without affecting the amount of impervious surface. This seemed wrong. Jacob noted the coverage didn't count against them. [Staff] would make them address stormwater management. He thought neighbors wanted some green space rather than building property line to property line. The most extreme [impervious surface outside the buildable area] they saw was with houses built before zoning that were built in the 50-foot [buffer area] to the lake. The whole house wasn't counted towards the

coverage because it was entirely in the setback to the lake, and wasn't in the buildable area by the current definition. Wally talked about problems with infiltration and salting the roads.

Jacob foresaw a challenge with people trying to deal with [impervious surface] when they turned in applications. People wouldn't understand what it meant unless they added wording to clarify what it said. Steve talked about including all impervious surfaces on the property in the numerator of the calculation and all of the setback areas that wasn't steep in the denominator. Jacob read the City of Polson's lot coverage definition. They looked at the average slope for the entire lot, and that gave the lot coverage allowed. It was another way to look at it. Rick asked if it had survived legal challenges. Jacob wasn't aware of any. The only problem was that the City didn't address slopes over 25% at all whereas this zoning tried to. Steve thought they should do that. It would be the portion of the lot that had less than 25% slope on which impervious surface could lawfully be constructed. If a small section of the lot was over 25%, it would be taken out, as was the case now. The change was to include all of the lot except the 25% and to include all of the impervious surface.

Rick gave the scenario of finding a midpoint that was environmentally, economically and socially happy where there was a lot of grey. With a 5-acre lot fronting a body of lake, was there a midpoint to get an accommodation if the slope was 27%? Steve pointed out there were variances. Jacob asked if the whole lot in the example was over 25%. Rick thought possibly. He was looking for a midpoint that would keep his group happy and still accommodate development. Steve described that when a subdivision was platted, the subdivider was required to make sure that every lot created had a spot to build a house and had access. If there were a lot of steep slopes, they had to make the lots bigger to include a flat spot for each lot and to put in a switchback to reach the flat spot if needed. Jacob said subdividers had to demonstrate physical and legal access and that a building site that complied with the regulations existed. Drainfield, replacement field and so forth also had to be demonstrated. Sigurd asked if they could make a building site with a bulldozer. Jacob said the zoning didn't currently address that. The subdivision had to be in compliance with the zoning. He gave the example of one subdivision approval that stated certain lots that required conditional use approval prior to development in a zoning district that allowed for slope disturbance as a conditional use. The subdivision regulations did take second act to the zoning in a lot of cases.

Frank: Attachment 3, pg. 16 item F: To the end of the sentence, add ', and has less than 25% slope.'

Jacob returned to Sigurd's question. If zoning allowed for slope disturbance, such as Finley Point zoning, you could get a conditional use to disturb slopes over 25%. If you did that and created a level area, you also had created more buildable area. Your ability to develop went up if you got that approval because you then had more flat area. Steve observed that these [proposed] regulations said there were limits to creating a lot with a bulldozer without a permit. Jacob said the debate with Lake Mary Ronan would be one interested group felt slope disturbance was a good idea and another interested group that was very against it. Rick said the balance he looked for was owners had the right to do what was environmentally correct. It was inappropriate to say no just because they didn't want it. He didn't want to see the lake harmed.

David returned to covenants and STRs and a way to encourage these folks to get these covenants changed and to change SB 300 as he understood it. Wally said if SB 300 said the covenant couldn't be more restrictive than the zoning, you just banned conservation easements in zoning districts. He didn't think the bill read or passed the way they said. He had trouble believing that the State would have done that and not thought that through.

Jacob pointed out in attachment 3 on pg. 15 in the amendment section that the previous requirement to amend every 5 years was proposed to be as amended as needed or when amendments were proposed, which was more realistic.

Frank: Attachment 3, pg. 17, item J: Remove 'at the time of damage' and replace 'by the destructive action' with 'beyond use'. Steve liked the volume idea discussed earlier although decks and so forth might be the area times 1 foot in height. Frank suggested using the total square footage of all exterior surfaces. Jacob thought the general wording allowed them to use different approaches. Steve observed it also allowed the homeowner or contractor who wanted to keep [a deteriorated structure] to calculate the 60% in a different way. Wally said it used to be more than 60% of the value. The problem was which value was the target value. The harder it was for the citizen to have a reasonable expectation of what is was, it became arbitrary at some point. Jacob mentioned this usually was used where someone wanted to rebuild a cabin in the setback. It could be used for cases where something burnt down or deteriorated over time but this very seldom happened. Steve referred to the scenario where 50% was repaired one year and the next 50% was repaired the next. That wasn't the intention of the rule either.

Jacob thought the new definition was better than the old and was open to better ideas. With Frank's suggestion, they needed to tie it to a moment in time for a reference point for the 60%. Steve recalled a building that was destroyed simply by time. A problem existed with value. If a building cost $1000 in the 1930's, it might cost $100,000 to rebuild today. Frank suggested usable or habitable floor area. If the roof and walls were destroyed, it wouldn't be usable. Frank and Steve came up with greater than 60% of the habitable floor area. If the roof was gone, it was destroyed completely. Frank asked about a daylight basement gutted by fire. Jacob didn't like floor area. Wally didn't like habitable or usable. A porch or landing wasn't habitable but were part of the area. The original purpose was to bring things into the regulations. You had to weigh the custom and culture of the neighborhood. What was the purpose with the ordinance? This had caused them a lot a grief. Steve thought meaningless portions of the regulations should be removed. If items were in the regulations because they were important, then they'd like all of the property to be conforming at some point. If there was a reason for setbacks, if a house was in the setbacks and then destroyed more than 60%, they needed to move it out of the setback when they rebuilt. The idea was the setbacks were there for a reason.

Jacob suggested 'A building/structure or nonconforming use is considered destroyed if greater than 60% of the structure that existed prior to deterioration resulting from the destructive action as calculated by the zoning administrator.' If they didn't like the number, they could appeal it to the BOA. Interpretation of the regulations was the responsibility of the zoning administrator. Steve liked Frank's words, and suggested adding 'as determined by the zoning administrator' to the end. He thought they'd get into problems with the other. Jacob thought it would be a lot safer and better than what they had. Currently they had a debate about floor area, which was

even harder to define. Wally thought it was a legitimate thing to do in terms of delegating discretion to the administrator. The problem became what standard the person used that wasn't arbitrary. You didn't want the administrator [harassed] over this not being a reasonable test. If the purpose was to make everything meet the setbacks, that should be included in the purposes at the beginning. It wasn't just health, safety and welfare. It was to try to incorporate in the neighborhood structures those items that were identified as important in the regulations. Then you had a reason why you had a 60% cutoff point. This was also guidance and reason for the zoning administrator about what they were trying to get to. Jacob's language worked fine if you gave him the guidance. Steve read the current proposed purpose. Frank said the existing pattern of growth included buildings that didn't conform. Steve said the part that was growing, the new buildings, met the regulations. When someone was building new because something had been destroyed, it needed to meet the regulations. Wally thought someone could make something new and keep the same footprint if they didn't change the height or the rest. Was replacement new? The old structure's footprint was the rural character of the neighborhood. He was just saying to give Jacob some direction.

Jacob located the word 'destroyed' in the regulations in Appendix 3, pg. 2 item C, at the end of the first sentence of the second paragraph. Steve added a sentence to the end of the first paragraph about the purpose since Wally said they needed to somewhere say there was a reason why you couldn't build the exact same thing that was there before if it got destroyed. Jacob thought it disagreed with the portion of item C that talked about a reasonable variance. Wally thought they could give discretion to the zoning administrator but give them some direction. You were a lot less liable to have issues later if you did so. Steve said the direction would be what calculation to use. Wally said in part, but to also cover why they had a cut-off point of 60%. The statement about the purpose helped. The group fine-tuned the wording: 'To meet the purpose of these regulations, the degree of nonconformity should be reduced.'

Returning to the definition of 'destroyed', the group talked more about the phrasing and calculation. Steve suggested '60% of the floor surface that will still meet the use'. Frank liked that it covered a variety of structure. Jacob pointed out it was still subjective in terms of 'meets the use'. Frank suggested 'unusable for original purpose'. Frank, Steve and Rick came up with 'The building/structure or nonconforming use is considered destroyed if greater than 60% of the total floor area of the structure that existed is deteriorated beyond the original purpose.' Steve asked Jacob what he thought. Jacob noted it was their recommendation.

David: pg. 13, Attachment 3, item 2.a: Add the fire dept. comment.

Frank and Steve: Attachment 3, pg. 19, item FF: replace 'recreational vehicles' with 'temporary dwellings'.

Jacob asked how they wanted to enforce STRs. Steve thought that was a question for the Commissioners. Rick suggested it was a lawyer question.

Motion made by Frank Mutch, and seconded by Rick Cothern, that these regulations as written and amended be forwarded to the County Commissioners for approval. Motion carried, all in favor.

MINUTES -- Deferred

OTHER BUSINESS (9:48 pm)
Discussion of Litigation Strategy/Update—Executive Session: (9:48 pm-10 pm)

Steve Rosso, chair, adjourned the meeting at 10:00 pm.